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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 942

LITTLE YORK GOLD WASHING AND WATER COMPANY, LIMITED, ET AL., PLAINTIFFS IN ERROR,

vs.

JAMES H. KEYES, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, DISTRICT OF CALIFORNIA.

a Wilmington Dept

FILED October 22d **1877.**

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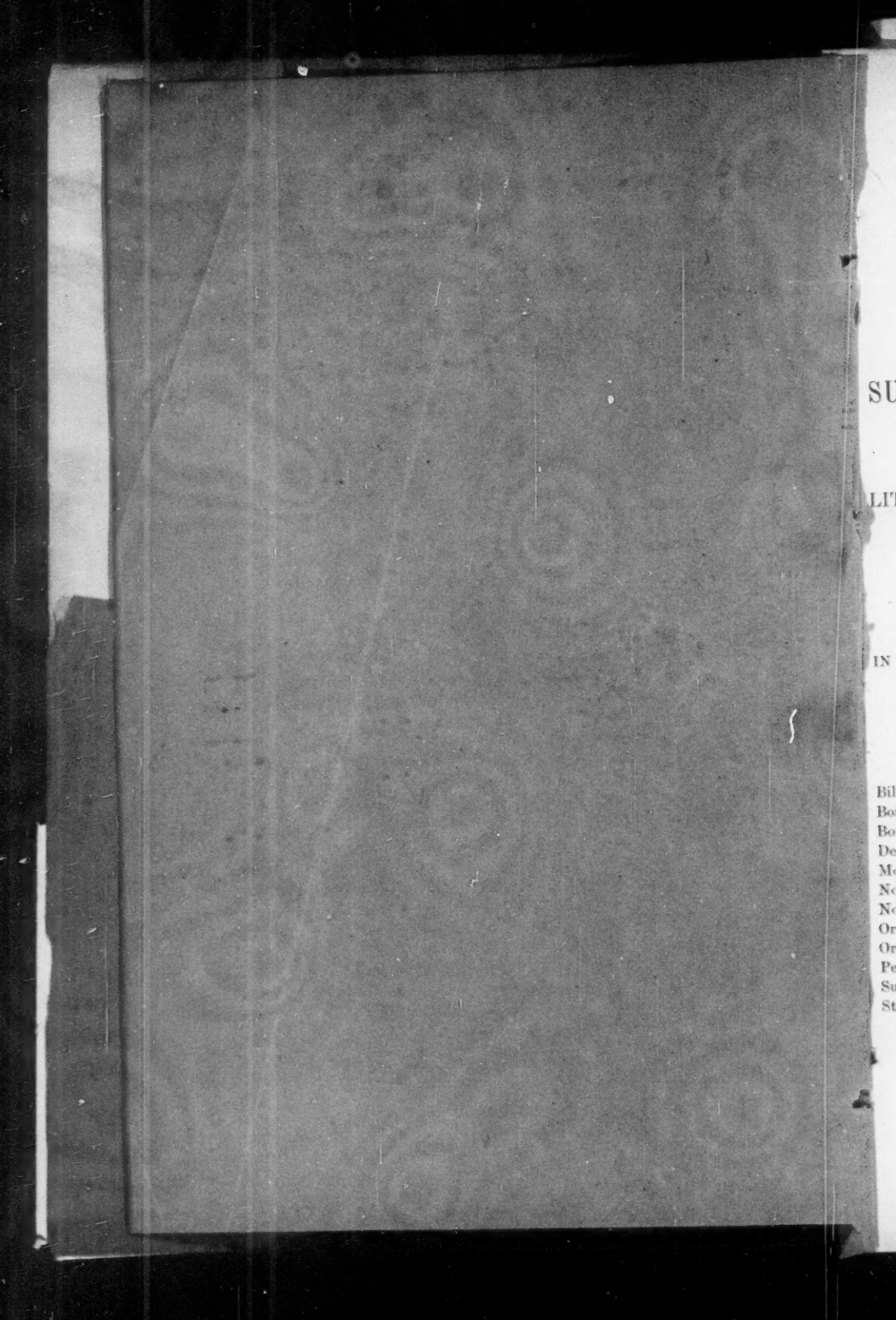

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1 *Citation.*

UNITED STATES OF AMERICA, *ss*:

To James H. Keyes, defendant in error, greeting:

You are hereby cited and admonished to be and appear at a supreme court of the United States of America, to be held at the city of Washington, in the district of Columbia, on the second Monday of October, A. D. 1877, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the district of California, wherein the Little York Gold Washing and Water Company (Limited)—sued as "Little York Gold and Water Company"—Cedar Creek Gold Mines and Water Company (Limited), Birdseye Creek Gold Mining Company (limited)—sued as "Birdseye Gold, Silver and Copper Mining Company"—Franklin Gravel Mining Company, Polar Star Hydraulic Gold Mining Company, Elmore Hill Hydraulic Mining Company, Chalk Mountain Blue Gravel Mining Company, Miners' Ditch Company, John P. Staples, Chas. W. Staples, James Staples, J. H. LeKamp, B. Huysinck, Wm. H. Raymond, John Hussey, Edward Carney, P. L. Goodspeed, H. E. Turner, L. W. Preble, A. A. Sargent, George F. Jacobs, Ah Wong, H. Knight, Wm. Knight, Conrad Wick, Philip Wick, A. N. Nutting, Alonzo Cooper, J. B. Frick and G. A. Frick are plaintiffs in error, and you, said James H. Keyes, are defendant in error, to show cause, if any there be, why the order of said circuit court, remanding the cause of James H. Keyes *vs.* Little York Gold Washing and Water Company (limited), *et al*, to the district court of the tenth judicial district of the State of California, in and for the county of Sutter, should not be corrected, and speedy justice should not be done to the parties in that behalf.

STEPHEN J. FIELD,
Associate Judge of United States Supreme Court.

August 6th, 1877.

Service, by copy, of the within citation acknowledged this 22d day of August, A. D. 1877.

P. VANCLIEF,
Attorney of Plaintiff.

Filed Aug. 6, 1877.

L. S. B. SAWYER, *Clerk.*
By J. F. O'BEIRNE, *Dep'y Cl'k.*

2 *Writ of Error.*

UNITED STATES OF AMERICA, *ss*:

The PRESIDENT of the United States of America—to the Judges of the Circuit Court of the United States, for the District of California, in the Ninth Judicial Circuit—Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court, before you,

between The Little York Gold Washing and Water Company, Limited (sued as "Little York Gold and Water Company, Limited"), Cedar Creek Gold Mines and Water Company, Limited; Bird's-Eye Creek Gold Mining Company, Limited (sued as "Bird's-Eye Gold, Silver and Copper Mining Company"); Franklin Gravel Mining Company; Polar Star Hydraulic Gold Mining Company; Elmore Hill Hydraulic Mining Company; Chalk Mountain Blue Gravel Mining Company; Miners' Ditch Company; John P. Staples, Chas. W. Staples, James Staples, J. H. Le Kamp, B. Huysinck, Wm. H. Raymond, John Hussey, Edward Carney, P. L. Goodspeed, H. E. Turner, L. W. Preble, A. A. Sargent, George F. Jacobs, Ah Wong, H. Knight, Wm. Knight, Conrad Wick, Philip Wick, A. N. Nutting, Alonzo Cooper, J. B. Frick and G. A. Frick, plaintiffs in error, and James H. Keyes, defendant in error—a manifest error hath happened, to the great damage of the said plaintiffs in error, as by their complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf; you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the supreme court of the United States of America, together with this writ, so that you have the same at the City of Washington, in the District of Columbia, on the second Monday of October, next, in the said supreme court, to be there and then held, that the record and proceedings aforesaid be inspected, the said supreme court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness, the Hon. Morrison R. Waite, chief justice of the supreme court of the United States, this sixth day of August, in the year of our Lord one thousand eight hundred and seventy-seven, and of the independence of the United States, the one hundred and second.

The above writ of error is hereby allowed.

STEPHEN J. FIELD,
Associate Justice of the United States Supreme Court.

(Endorsed:) U. S. supreme court. Little York Gold Washing and
3 Water Company (Limited) *vs.* James H. Keyes, defendant in error.
Writ of Error: Filed 6th August, 1877.

L. S. B. SAWYER, *Clerk.*
By J. F. O'BEIRNE, *Deputy Clerk.*

TRANSCRIPT ON APPEAL.

Summons.

1 In the District Court of the Tenth Judicial District of California, County of Sutter.

The People of the State of California to the Little York Gold and Water Company (Limited), Cedar Creek Gold Mines and Water Company (Limited), Bird's Eye Gold and Silver and Copper Mining Company, Franklin Gravel Mining Company, Polar Star Hydraulic Gold Mining Company, Elmore Hill Hydraulic Mining Company, Chalk Mountain Blue Gravel Company, Miners' Ditch Company, John Staples, Charles Staples, James Staples, J. H. Lekamp, B. Huysink, ——— Raymond, John Hussey, Edward Carney, P. L. Goodspeed, H. E. Turner, L. W. Preble, A. A. Sargent, George F. Jacobs, Ah Wong, ——— Knight, ——— Knight, Conrad Wyck and ——— Wyck, ——— Nutting, ——— Cooper, ——— Frick and ——— Frick, greeting:

2 You are hereby summoned to answer the complaint of James H. Keyes, in said court, filed against you, within ten days from the service of this writ, exclusive of the day of service, if served on you in this county; if served out of this county, but within this judicial district, within twenty days; but, if served on you without said district, then in forty days from such service, exclusive of the day of service, in an action commenced on the 29th day of July, 1876, in said court.

Said action is brought to enjoin and restrain you perpetually from depositing the tailings and debris from your several mining claims, in the counties of Placer and Nevada, into the channels of Bear river or any of its tributaries, and from suffering said tailing and debris from flowing into said river or any of its tributaries, and also from fouling or polluting the waters of said river or any of its tributaries with said tailings or debris.

3 The cause of said action is, that by depositing such tailings and debris in the channel and tributaries of said river, you have caused them to be washed and deposited on said plaintiff's land, in said county of Sutter, and thereby injured said land, and interfered with the comfortable use and enjoyment thereof by the plaintiff; and that you threaten and intend to repeat and continue the said wrongful acts, until plaintiff shall be thereby totally deprived of the use and enjoyment of his said land, and the fixtures and improvements thereon.

And you are hereby notified that if you fail to appear and answer the complaint, as directed, plaintiff will apply to the court for the relief demanded in his complaint.

In testimony whereof, I, J. M. Thomas, clerk of the tenth judicial district court aforesaid, do hereunto set my hand and affix the seal of said court, at office in Yuba City, this 29th day of July, A. D. 1876.

[SEAL.] J. M. THOMAS, *Clerk.*

P. VANCLIEF AND
CHAS. E. FILKINS,
Attorneys for Plaintiff.

GEO. CADWALLADER,
Of Counsel.

4 STATE OF CALIFORNIA, }
County of Sutter. }

W. P. Harkey, being duly sworn, deposes and says, that he is a citizen of the United States, over twenty-one years of age, and is not a party to the action in which the summons hereto annexed was issued; that he served the said summons on the defendants hereinafter named at the times, places, and in the manner following, to wit:

On the Little York Gold and Water Company (Limited), on the 31st day of July, 1876, in the county of Placer, by delivering to A. H. Hagadon, the managing agent of said company, a copy of said summons, and of the complaint in the action in which it was issued.

On the Cedar Creek Gold Mines and Water Company (Limited), in
5 the county of Placer, on the 31st day of July, 1876, by delivering to T. B. Ludlum, the managing agent of said company, a copy of said summons, and a copy of the complaint in said action.

On the Bird's Eye Gold, Silver and Copper Mining Company, in the county of Nevada, on the 31st day of July, 1876, by delivering to George Powers, the managing agent of the last mentioned company, a copy of said summons, and a copy of the complaint in said action.

On the Franklin Gravel Mining Company, in the county of Placer, on the 31st day of July, 1876, by delivering to James Teaff, the managing agent of the last mentioned company, a copy of said summons, and a copy of the complaint in said action.

On the Polar Star Hydraulic Gold Mining Company, in the county of Placer, on the 31st day of July, 1876, by delivering to J. S. Colgrove, the managing agent of the last mentioned company, a copy
6 of said summons, and a copy of the complaint in said action.

On the Elmore Hill Hydraulic Mining Company, in the county of Placer, on the 31st day of July, 1876, by delivering to John Parham, the managing agent of the last mentioned company, a copy of said summons, and a copy of the complaint in said action.

On the Miners' Ditch Company, in the county of Placer, on the 31st day of July, 1876, by delivering to J. L. Gould, the managing agent of the last mentioned company, a copy of said summons, and a copy of the complaint in said action.

On John, Charles and James Staples, in the county of Placer, on 31st day of July, 1876, by delivering to each of said last mentioned parties a copy of said summons, and a copy of the complaint in said action.

On J. H. Lekamp, in the county of Placer, on the 31st day of July, 1876, by delivering to him a copy of said summons, and copy of the complaint in said action.

7 On B. Huysink, in the county of Placer, on the 31st day of July, 1876, by delivering to him a copy of said summons, and a copy of the complaint in said action.

On John Hussey, in the county of Nevada, on the 31st day of July, 1876, by delivering to him a copy of said summons, and a copy of the complaint in said action.

On Edward Carney, P. L. Goodspeed, and H. E. Turner, in the county of Nevada, on the 1st day of August, 1876, by delivering to

each of said last mentioned parties a copy of said summons, and a copy of the complaint in said action.

On H. Knight and W. H. Knight, in the county of Nevada, on the 1st day of August, 1876, by delivering to each of said last named parties a copy of said summons, and a copy of the complaint in said action.

On Conrad Wyck and Phil. Wyck, in the county of Nevada, on the 1st day of August, 1876, by delivering to each of said last named parties a copy of said summons, and a copy of the complaint in said action.

8 On A. N. Nutting, A. Cooper, J. B. Frick and G. A. Frick, in the county of Nevada, on the 1st day of August, 1876, by delivering to each of said last named parties a copy of said summons, and a copy of the complaint in said action.

W. P. HARKEY.

Subscribed and sworn to before me, this 4th day of August, A. D. 1876.

[SEAL.] J. M. THOMAS, *Clerk.*
By H. G. PIERSON, *Dep'ty.*

(Endorsed): Sh'ff. Return on Summons.
Filed Aug. 4th, 1876. J. M. THOMAS, *Clerk.*

STATE OF CALIFORNIA, }
County of Sutter, } *ss.*

I, J. M. Thomas, county clerk in and for Sutter county, State afore-
9 said, and *ex officio* clerk of the dist. court thereof, do hereby certify that the above and foregoing is a full, true and correct copy of the original sheriff's return on summons in the above entitled action, together with the indorsements thereon, as the same appears on file in my office.

Witness my hand and the seal of said District Court, December 18th, A. D. 1876.

J. M. THOMAS, *Clerk.*
By HENRY PIERSON, *Deputy.*

(Endorsed): Filed January 31st, 1877.
L. S. B. SAWYER, *Clerk.*
By J. F. O'BEIRNE, *Dep. Clk.*

10 *Summons.*

In the District Court of the Tenth Judicial District, State of California, County of Sutter.

The People of the State of California to the Little York Gold and Water Company (Limited), Cedar Creek Gold Mines and Water Company (Limited), Bird's Eye Gold, Silver and Copper Mining Company, Franklin Gravel Mining Company, Polar Star Hydraulic Gold Mining Company, Elmore Hill Hydraulic Mining Company, Chalk Mountain Blue Gravel Company, Miners' Ditch Company, John Staples, Charles Staples, James Staples, J. H. Le

Kamp, B. Huysink, ——— Raymond, John Hussey, Edward Carney, P. L. Goodspeed, H. E. Turner, L. W. Preble, A. A. Sargent, George F. Jacobs, A. Wong, ——— Knight, ——— Knight, Conrad Wyck and ——— Wyck, ——— Nutting, ——— Cooper, ——— Frick and ——— Frick, greeting:

11 You are hereby summoned to answer the complaint of James H Keyes, in said court, filed against you, within ten days from the service of this writ, exclusive of the day of service, if served on you in this county; if served out of this county, but within this judicial district, within twenty days; but, if served on you without said district, then in forty days from such service, exclusive of the day of service, in an action commenced on the 29th day of July, 1876, in said court.

Said action is brought to enjoin and restrain you perpetually from depositing the tailings and debris from your several mining claims, in the counties of Placer and Nevada, into the channels of Bear river, or any of its tributaries, and from suffering said tailings and debris from flowing into said river or any of its tributaries, and also from fouling or polluting the waters of said river or any of its tributaries with said tailings or debris. The cause of said action is, that by depositing such
12 tailings and debris in the channel and tributaries of said river, you have caused them to be washed and deposited on plaintiff's land, in said county of Sutter, and thereby injured said land, and interfered with the comfortable use and enjoyment thereof by the plaintiff, and that you threaten and intend to repeat and continue the said wrongful acts until plaintiff shall be thereby totally deprived of the use and enjoyment of his said land, and the fixtures and improvements thereon.

And you are hereby notified that if you fail to appear and answer the complaint as directed, plaintiff will apply to the court for the relief demanded in his complaint.

In testimony whereof, I, J. M. Thomas, clerk of the tenth judicial court aforesaid, do hereunto set my hand and affix the seal of said court, at office in Yuba City, this 5th day of August, A. D. 1876.

[SEAL.] J. M. THOMAS, *Clerk.*

13 P. VANCLIEF AND
CHARLES E. FILKINS,
Attorneys for Plaintiff.

GEO. CADWALLADER,
Of Counsel.

SHERIFF'S OFFICE,
County of Alameda, } ss.

I hereby certify, that I received the within summons on the 7th day of August, A. D. 1876, and personally served the same upon the hereinafter named defendant, by delivering to and leaving with W. H. Raymond, personally, in the county of Alameda, at the time set opposite his name, a copy of said summons; and I further certify, that the copy so delivered to and left with W. H. Raymond, said defendant, was attached to a copy of the complaint referred to in said summons.

Name of defendant served, W. H. Raymond. Time of service, August 7th, 1876.

Dated at Oakland, this 8th day of August, 1876.

Sheriff's fees, $2 30.

14 H. N. MORSE, *Sheriff.*
By W. S. HARLOW, *Deputy Sheriff.*

Filed August 10, A. D. 1876.

J. M. THOMAS, *Clerk.*
By H. G. PIERSON, *Deputy.*

STATE OF CALIFORNIA, }
County of Sutter, } ss.

I, J. M. Thomas, county clerk in and for Sutter county, State of California, and *ex officio* clerk of the district court thereof, do hereby certify that the above and foregoing is a full, true and correct copy of the original summons in the above entitled action, together with the indorsements thereon, as the same appears on file in my office.

Witness my hand and the seal of said Court, this the 18th day of December, A. D. 1876.

[SEAL.] J. M. THOMAS, *Clerk.*
By HENRY PIERSON, *Deputy.*

[Endorsed]: Filed January 31st, 1877.

L. S. B. SAWYER, *Clerk.*
By J. F. O'BEIRNE, *Dep. Clk.*

15 *Summons.*

In the District Court of the Tenth Judicial District, State of California, County of Sutter.

The People of the State of California to the Little York Gold and Water Company (Limited), Cedar Creek Gold Mines and Water Company (Limited), Bird's Eye Gold, Silver and Copper Mining Company, Franklin Gravel Mining Company, Polar Star Hydraulic Gold Mining Company, Elmore Hill Hydraulic Mining Company, Chalk Mountain Blue Gravel Company, Miners' Ditch Company, John Staples, Charles Staples, James Staples, J. H. Le Camp, B. Huysink, ——— Raymond, John Hussey, Edward Carney, P. L. Goodspeed, H. E. Turner, L. W. Preble, A. A. Sargent, George F. Jacobs, Ah Wong, ——— Knight, ——— Knight, Conrad Wyck and ——— Wyck, ——— Nutting, ——— Cooper, ——— Frick and ——— Frick, greeting:

You are hereby summoned to answer the complaint of James H.
16 Keyes, in said court, filed against you, within ten days from the service of this writ, exclusive of the day of service, if served on you in this county; if served out of this county, but within this judicial district, within twenty days; but, if served on you without said district, then in forty from such service, exclusive of the day of service, in an action commenced on the 29th day of July, 1876, in said court.

Said action is brought to enjoin and restrain you, perpetually, from depositing the tailings and debris from your several mining claims, in the counties of Placer and Nevada, into the channels of Bear river or any of its tributaries, and from suffering said tailings and debris from flowing into said river or any of its tributaries, and also from fouling or polluting the waters of said river or any of its tributaries with said tailings or debris.

The cause of said action is, that by depositing such tailings and
17 debris in the channel and tributaries of said river, you have caused them to be washed and deposited on said plaintiff's land, in said county of Sutter, and thereby injured said land, and interfered with the comfortable use and enjoyment thereof by the plaintiff; and that you threaten and intend to repeat and continue the said wrongful acts, until plaintiff shall be thereby totally deprived of the use and enjoyment of his said land, and the fixtures and improvements thereon.

And you are hereby notified that if you fail to appear and answer the complaint as directed, plaintiff will apply to the court for the relief demanded in his complaint.

In testimony whereof, I, J. M. Thomas, clerk of the tenth judicial district court aforesaid, do hereunto set my hand and affix the seal of said court, at office in Yuba City, this 5th day of August, A. D. 1876.

[SEAL.] J. M. THOMAS, *Clerk.*

18 P. VANCLIEF AND
CHAS. E. FILKINS,
Attorneys for Plaintiff.

GEO. CADWALLADER,
Of Counsel.

I hereby certify that I received this summons on the 8th day of August, 1876, at 9 o'clock A. M., and served, personally, a true copy of summons and complaint, upon George F. Jacobs, in the county of Nevada, State of California, on the 28th day of August, 1876. And also served a like copy of summons and complaint upon T. M. Stranahan, as superintendent of the Chalk Mountain Blue Gravel Company, in the county of Nevada, State of California, on the 16th day of October, 1876.

C. R. CLARKE, *Sheriff.*
By P. C. BYRNE, *Under-Sheriff.*

Filed Oct. 23, 1876.

J. M. THOMAS, *Clerk.*
By H. G. PIERSON, *Deputy Clerk.*

19 STATE OF CALIFORNIA, }
County of Sutter, } ss.

I, J. M. Thomas, county clerk in and for Sutter county, State of California, and *ex officio* clerk of the district court thereof, do hereby certify, that the above and foregoing is a full, true and correct copy of the original summons in the above entitled action, together with the endorsements thereon, as the same appears on file in my office.

Witness my hand and the seal of said court, this 18th day of December, A. D. 1876.

[SEAL.] J. M. THOMAS, *Clerk.*
By HENRY PIERSON, *Deputy.*

[Endorsed]: Filed January 31st, 1877.

L. S. B. SAWYER, *Clerk.*
By J. F. O'BEIRNE, *Dep. Clk.*

20 *Bill of Complaint.*

In the District Court of the Tenth Judicial District in and for the County of Sutter, State of California.

JAMES H. KEYES, Plaintiff,

vs.

LITTLE YORK GOLD AND WATER COMPANY (Limited), CEDAR CREEK GOLD MINES AND WATER COMPANY (Limited), BIRDS-EYE GOLD, SILVER AND COPPER MINING COMPANY, FRANKLIN GRAVEL MINING COMPANY, POLAR STAR HYDRAULIC GOLD MINING COMPANY, ELMORE HILL HYDRAULIC MINING COMPANY, CHALK MOUNTAIN BLUE GRAVEL COMPANY, MINERS' DITCH COMPANY, JOHN STAPLES, CHARLES STAPLES, JAMES STAPLES, J. H. LEKAMP, B. HUYSINK, ——— RAYMOND, JOHN HUSSEY, EDWARD CARNEY, P. L. GOODSPEED, H. E. TURNER, L. W. PREBLE, A. A. SARGENT, GEORGE F. JACOBS, AH WONG, ——— KNIGHT, ——— KNIGHT, CONRAD WYCK, AND ——— WYCK, ———
21 NUTTING, ——— COOPER, ——— FRICK, ——— FRICK, Defendants.

The above named plaintiff complains against the above named defendants, and for cause of complaint shows unto the Honorable Court as follows, to wit:

First. That the defendant, styled the "Little York Gold and Water Company (Limited)," is a mining corporation organized pursuant to the laws of the Kingdom of Great Britain, for the purpose of mining in the State of California. That it is now, and for more than the three years last past has been engaged in hydraulic mining in the county of Nevada, of this State, where it owns and works by what is called the "hydraulic process," those certain mining claims called the "Empire," "Christmas Hill," "Council," and "Liberty Hill."

That the defendant, styled the Cedar Creek Gold Mines and Water
22 Company (Limited) is likewise a mining corporation organized pursuant to the laws of the Kingdom of Great Britain, for the purpose of mining in the State of California. That it is now, and for more than the three years last past has been engaged in hydraulic mining, in the county of Placer, of this State, where it owns and works, by the process aforesaid, those certain mining claims called the "Yankee," "Badger," "Jehosephat," and "Central."

That the defendant, styled the Bird's-Eye Gold, Silver and Copper Mining Company, is likewise a mining corporation organized for the purpose of mining in the State of California; that it is now and for more than the three years last past has been engaged in hydraulic mining in the county of Nevada, of this State, where it owns and works by the process aforesaid those certain mining claims called the "Red Dog," "Walloupa," and "Niece and West."

23 That the defendant, styled the Franklin Gravel Mining Company, is a mining corporation organized under the laws of this State, for the purpose of mining in the State of California; that it is now, and for more than the three years last past has been engaged in hydraulic mining in the county of Nevada, of this State, where it owns and works by the process aforesaid, the mining claim called the "Franklin."

That the defendant, styled the Polar Star Hydraulic Mining Company, is likewise a mining corporation organized under the laws of
24 this State, for the purpose of mining in the State of California; that it is now, and for more than the three years last past has been engaged in hydraulic mining in the county of Placer, of this State, where it owns and works by the process aforesaid the mining claim called the "Polar Star."

That the defendant, styled the Elmore Hill Hydraulic Mining Company, is likewise a mining corporation organized under the laws of this State, for the purpose of mining in the State of California; that it is now, and for more than the three years last past has been engaged in hydraulic mining in the county of Placer, of this State, where it owns and works, by the process aforesaid, the mining claim called the "Elmore Hill."

That the defendant, styled the Chalk Mountain Blue Gravel Mining Company, is likewise a mining corporation, organized under the laws of this State for the purpose of mining in the State of California; that it is now, and for more than the three years last past has been engaged in hydraulic mining in the county of Nevada, of this State, where it owns and works by the process aforesaid the mining claim called the "Chalk Bluff."

That the defendant, styled the "Miners' Ditch Company," is likewise a corporation organized under the laws of this State, for the purpose of mining and selling water to miners in the State of Cali-
25 fornia; that it is now, and for more than the three years last past has been, engaged in hydraulic mining in the county of Placer, in this State, where it owns and works, by the process aforesaid, the mining claim called the "Pine Tops."

That the defendants, John, Charles, and James Staples, are now and, for more than the three years last past has been, co-partners, engaged in hydraulic mining in this State, in the county of Placer, where they own and work, by the process aforesaid, the mining claim called the "Somerset."

That the defendant, J. H. LeKamp, is now, and for more than the three years last past has been engaged in hydraulic mining in the county of Placer, of this State, where he owns and works by the process aforesaid the mining claim called the "LeKamp." That the defendant, B. Huysink is now and for more than the three years last

past has been engaged in hydraulic mining in the county of Placer, of
26 this State, where he owns and works, by the process aforesaid, the mining claim called the "Boston."

That the defendant, ———— Raymond (whose Christian name is unknown to the plaintiff, but when discovered he prays leave to insert herein) is now, and for more than the three years last past has been, engaged in hydraulic mining in the county of Nevada, in this State, where he owns and works, by the process aforesaid, the mining claim called the "Doolittle."

That the defendant, John Hussey, now is, and for more than three years last past has been, engaged in hydraulic mining in the county of Nevada, of this State, where he owns and works, by the process aforesaid, the mining claim called the "Hussey."

That the defendants, Edward Carney, P. L. Goodspeed, H. E. Turner, and L. W. Preble, are now, and for more than the three years last past have been, engaged in hydraulic mining in the county of Nevada, of
27 this State, where they work, by the process aforesaid, the mining claim as the "Gouge Eye" on Hunt's Hill.

That the defendants, A. A. Sargent and George F. Jacobs, are mining co-partners, and by the firm name of Sargent & Jacobs, are now, and for more than three years last past have been, engaged in hydraulic mining in the county of Nevada, in this State, where they own and work by the process aforesaid, the mining claim called "Quaker Hill."

That the defendant, Ah Wong, is now, and for more than the three years last past has been, engaged in hydraulic mining in the county of Nevada, of this State, where he owns and works, by the process aforesaid, the mining claim called "Buckeye."

That the defendants, ———— Knight and ———— Knight (whose Christian names are unknown to plaintiff, and he prays that when discovered he may have leave to insert them herein), are mining co-partners under the firm name of Knight Brothers, and now, and
28 for more than the three years last past, have been engaged in hydraulic mining in the county of Nevada, of this State, where they own and work the mining claim called the "Remington Hill." That the defendants, Conrad Wyck and ———— Wyck (whose Christian name is unknown, and plaintiff asks leave to insert it herein when discovered), are mining co-partners under the firm name of Conrad Wyck & Brother, and are now, and for more than three years last past have been, engaged in hydraulic mining in the county of Nevada, in this State, where they own and work, by the process aforesaid, a mining claim on a place called "Remington Hill."

That the defendants, ———— Nutting, ———— Cooper, and ———— Frick, ———— Frick (whose Christian names are unknown to the plaintiff, but when discovered he prays for leave to insert them herein), are now, and for more than the three years last past have
29 been, engaged in hydraulic mining in the county of Nevada, of this State, where they own and work, by the process aforesaid, the mining claims called "Lowell Hill" and "Swamp Angel."

Second. That the said mining claims of the said defendants are

situate at an elevation of 3,000 feet, or thereabouts, above the level of the Sacramento valley, upon the hill-tops adjacent to Bear river and its tributaries, viz: Little Bear river, Steep Hollow, and Greenhorn creeks, and Missouri canyon, and all lie in the counties aforesaid within a radius of seven miles; and the said mining claims are situate in township 16, north range 10 East, Mount Diablo Base and Meridian, and in sections 4, 5 and 6, of township 15, of the same range, base and meridian, and in township 16, North range, 11 east, of the same base and meridian. That the said mining claims of the said defendants are hundreds of acres in extent, and of a depth exceeding fifty
30 feet, and consist of the surface earth, slightly charged with fine particles of gold, and under-lying it the channel of an old and extinct river—the earth, stones, and gravel with which the same is filled being more highly charged with said fine particles of gold than is the superincumbent earth; and these mining claims, which are the only hydraulic mining claims dumping their tailings into Bear river, or its tributaries, are worked by means of immense blasts of powder to loosen the gold-bearing and superincumbent earth, enormous heads of water to sweep the loosened earth into ditches, flumes and tail-races, set at a heavy grade, and through which, at an immense velocity, the said earth, water and stones rush, the gold therein being separated from the earth by the action of the water, and caught by means of pavements of stones and blocks of wood, set in the bottom of the ditches, flumes and tail-races aforesaid, and the refuse matter known
31 as tailings, and consisting of muddy water, sand, coarse gravel, round quartz pebbles, and cobble stones, are desposited at the dumps of the aforesaid mining claims, which dumps are either in the bed of Bear river or its aforesaid tributaries, or in the beds of the steep ravines and gulches immediately contiguous to and leading into the bed of Bear river, or its aforesaid tributaries; that said Bear river is a living stream, heading high up in the Sierra Nevada Mountains, and pursuing through deep canyons a westerly course, until it reaches the eastern margin of the Sacramento valley, at a place called "Camp Far West," where it debouches into that valley and crosses it on the same course, and empties into Feather river, at the town of Nicolaus, in Sutter county. That said river in crossing the Sacramento valley runs through strips of rich bottom land, varying from one-half to two miles in width, and which was originally first class agricultural land, and through which Bear river ran between high banks, and the water thereof was clear in summer, and sufficiently pure at all seasons
32 of the year for domestic and animal use, and for irrigating purposes.

That the grade of Bear river and its aforesaid tributaries from the dumps of the aforesaid mining claims to where it debouches as aforesaid into the Sacramento valley, exceeds fifty feet to the mile; and the tailings of the aforesaid mining claims, so deposited by the defendants in Bear river and its tributaries aforesaid, with the exception of the heavy cobbles and other heavy stones, are swept by the force of the water in Bear river and its tributaries aforesaid, down and through the canyon of Bear river, to the mouth of said canyon.

That from the mouth of said canyon to Feather river the grade of Bear river is so much reduced that all that part of said tailings

known as slickings, sand and small stones, instead of being carried down the channel of said river to its mouth, choke and fill it, and overflow the banks thereof and the adjacent bottom and low land, and
33 cause said river to form new channels and run at random over the said bottom and low lands, covering them up with the aforesaid slickings, sand and small stones, and making them totally worthless for any useful purpose; and so it is, that now over ten thousand acres of land in said Bear river valley have been covered to a depth varying from one and one-half to fifteen feet with slickings, sand, and small stones, from the mining claims of the defendants, to the utter ruin of said lands.

That within the last three years the said defendants, from their mining claims aforesaid have deposited in the channel of Bear river and its tributaries aforesaid, over twenty millions of cubic yards of tailings, and said defendants are now constantly, and at the rate of eight millions of cubic yards annually, depositing that amount of
34 tailings in the channels of Bear river and its tributaries aforesaid, well knowing, understanding, and intending that the slickings, sand, and small stones therein contained, will be carried down said channels and on to the agricultural lands in the valley of Bear river, to their utter destruction, and to the great damage and loss of the owners of those lands. And plaintiff further avers that the mining claims of the said defendants are so vast in extent that it will take twenty years at least to work them out; and with full knowledge of the irreparable damage to the lands in the valley of Bear river, caused by their aforesaid use of the channels of Bear river and its tributaries aforesaid as a place of deposit for their tailings, and intending to do such damage, the said defendants intend, and publicly and otherwise announce their intention, to continue using the channels of Bear river and its tributaries aforesaid, as a place for the deposit for the tailings from their said mining claims, regardless of the damage done
35 thereby to the lands in the valley of Bear river.

And plaintiff further avers that the said defendants, if not restrained by the injunction of this Honorable Court, will continue to use the channels of Bear river and its tributaries aforesaid, as a place of deposit for their tailings, and will deposit therein constantly and annually not less than eight millions of cubic yards of tailings, and the slickings, sand, and small stones therein contained will, by the force of the water in said Bear river, and its tributaries aforesaid, be thrown upon and cover up, and utterly destroy and render unfit for cultivation and habitation, all the lands in the valley of Bear river, which comprise over forty thousand acres.

Third. That the plaintiff is a farmer by occupation, and is the owner of and in the actual occupation, and ever since the following dates, has been the owner and in the actual possession of the following tracts of land, all of which are situate in the township 13 North,
36 Range 4 East, Mount Diablo Base and Meridian, and in Sutter county, State of California, and which are described as follows: North-west quarter of Section 13, since the fifteenth day of June, 1866. Lots 1 and 3 of Section 11, since June 13, 1866; South-east

quarter of South-east quarter of Section 11, and the South half of the South-west quarter, and the North-east quarter of the South-west quarter of Section 12, and the North-east quarter and the South-east quarter of Section 14, since the eighth day of September, 1866; South-west quarter of Section 13, since June 1, 1872. Lots 3, 4, and 5, in Section 12, since June 1st, 1874. The West half of the West half of Section 14, since the eleventh day of December, 1875.

The number of acres contained in all the foregoing tract is one thousand and sixty-nine; and plaintiff has affixed lasting and valuable improvements thereon, which are worth ten thousand dollars,
37 and which cost a much greater sum.

That said lands constitute what are known as bottom lands, and are situated upon the banks of Bear river, and in the valley thereof, about ten miles from where that stream debouches into the Sacramento valley, and midway between that point and the mouth of Bear river.

That his said lands were rich, and highly productive alluvial lands, capable of producing corn, wheat, and all the valuable agricultural staples of this State, and but for the damage already done to it by the slickings, sand and small stones, coming from the tailings of the defendants' mines, and further apprehended damage from the same cause, would be worth one hundred dollars per acre.

And plaintiff further avers that part of his said lands have already been flooded with sand, sediment and small stones, from the mining claims of defendants, to a depth varying from three inches to three
38 feet; and plaintiff has spent several thousand dollars in constructing levees around his said lands to protect them from the sand and sediment aforesaid, yet the whole thereof, including the improvements thereon, are in imminent danger of total destruction, by being submerged and covered to a depth of three or more feet, by the tailings from defendants' mines flowing down Bear river.

And plaintiff further avers, that if said defendants are further permitted to use the channels of Bear river and its tributaries aforesaid as a place of deposit for the tailings of their mines aforesaid, it will cause all his said lands to be overflowed with sand, sediment and small stones, and to become worthless and unfit for cultivation or habitation, as is at least ten thousand acres of similarly situated land in the valley of Bear river.

39 And plaintiff further avers, that the said defendants, in addition to the damage done to plaintiff and his lands, and other lands in the valley of Bear river, by covering the same with sand and sediment, so foul the water of Bear river, and its tributaries aforesaid, with the tailings of their mines aforesaid, as to make it carry in suspension one-third of its bulk in slickings and sand, thereby causing it to be unfit for domestic or animal use, or for irrigating purposes.

And plaintiff further avers, that were it not for the protection afforded his lands by the levees which has constructed as aforesaid, that the past three years they would have been covered with sand and sediment from the mining claims of defendants to a depth exceeding three feet.

That the acts of said defendants, in using the channels of Bear river

and its tributaries aforesaid as a place of deposit for the tailings of their said mines, constitute a nuisance to plaintiff and his property
40 aforesaid, and are an obstruction to the free use by plaintiff of his property in said lands and improvements, and interfere with and prevent plaintiff from enjoying and using his said property, and threaten it with total destruction.

And plaintiff further avers, that the said defendants work their said mining claims in the manner aforesaid, under varying water pressure, day and night, for an average of twenty hours per day, during eight months in each year, and make varying and unequal deposits of tailings in the channels of Bear river and its tributaries aforesaid; that the said tailings are not uniform in character or specific gravity; that the several dumps of said defendants' mining claims are in close proximity to each other, and often in actual contact, and the tailings from the said mines defendants mingle and commingle with each other in the channels of Bear river and its aforesaid tributaries, and flow together down the main channel of that
41 river upon the lands, and upon the other lands in the valley of Bear river; that each of the defendants has materially contributed to the damage and injury herein complained of, and intend to continue so to do; yet from the causes aforesaid, it is and always will be impossible for plaintiff to ascertain or prove the proportion in which either or any of the said defendants have contributed to his damage and injury as aforesaid, or will hereafter contribute to the damage and injury apprehended by him as aforesaid.

Plaintiff further avers, that many of the defendants are transient and irresponsible persons, against whom an action and a recovery of damages at law would be unavailing, and that if compelled to seek
42 separate relief against each defendant, it would be necessary for him to commence at least fifty actions against said defendants, and that the threatened repetition of the wrongful acts herein complained of would require many more actions; and that the costs and expenses of separate actions against each defendant would be more than equal to the amount of damages recovered; and said plaintiff further avers, that he is utterly remediless in the premises, except in a court of equity, which can alone afford him appropriate relief.

Wherefore, plaintiff prays, that by the decree of this court the said defendants, and each of them, may be perpetually enjoined and restrained from depositing the tailings and debris of their several mining claims into the channels of Bear river or its aforesaid tributaries, or from suffering the said tailings and debris of their several mines from flowing therein; and also from fouling or polluting the water of Bear river or its tributaries.

Plaintiff further prays judgment for the costs of this suit; and further, that during the pendency of this suit the said defendants may, by the order of this court, or the judge thereof, be enjoined and restrained from the commission of the acts above complained of.
43

P. VANCLIEF AND
CHAS. E. FILKINS,
Attorneys for Plaintiff.

GEO. CADWALLADER,
Of Counsel.

STATE OF CALIFORNIA,
County of Sacramento. }

James H. Keyes, being first duly sworn, on his oath deposes and says, that he is the plaintiff in the above entitled action, and that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and as to those matters he believes it to be true.

JAMES H. KEYES.

Subscribed and sworn to before, this 28th day of July, A. D. 1876.
[SEAL.] W. A. ANDERSON,
Notary Public, Sac. Co.

44 (Endorsed:) Complaint filed July 29th, 1876.
J. M. THOMAS, *Clerk.*

STATE OF CALIFORNIA,
County of Sutter, ss:

I, J. M. Thomas, county clerk in and for Sutter county, State of California, and *ex-officio* clerk of the district court thereof, do hereby certify that the above and foregoing is a full, true and correct copy of the original complaint in the above entitled action, together with the endorsements thereon, as the same appears on file in my office.

Witness my hand and the seal of said court, this the 22d day of December, 1876.

[SEAL.] J. M. THOMAS, *Clerk.*
By H. G. PIERSON, *Deputy.*

(Endorsed:) Filed January 31st, 1877.
L. S. B. SAWYER, *Clerk.*
By J. F. O'BEIRNE, *Dep. Clk.*

45 *Demurrer.*

In the District Court of the Tenth Judicial District of the State of California, within and for the County of Sutter.

JAMES H. KEYES, Pl'ff,
vs
LITTLE YORK GOLD WASHING AND WATER COMPANY (*Ld.*), *et al* Def'ts.

The defendants in the above entitled action, who have been served with process therein, now come by their attorneys, and jointly and separately demur to the complaint in said action, and for grounds of demurrer each one of said defendants assigns the following:

1. There is a misjoinder of parties defendant in said action, in this: It does not appear from said complaint that the defendants have any
46 community of interest in the subject matter of the action, nor that the alleged injuries sustained and apprehended by plaintiff have been or will be committed by defendants jointly or in concert with each other, or by any combination or collusion with each other; but on the

contrary thereof, it appears affirmatively on the face of the complaint that the interests of the defendants in the subject matter of the action are separate and distinct each from the others, and that the alleged injuries to the plaintiff have been and will be committed by defendants, each severally, and without any joinder or co-operation on the part of the other defendants, or any of them.

2. The complaint is ambiguous, unintelligible, and uncertain in this: As a ground for the equitable relief sought by the plaintiff the complaint alleges that many of the defendants are transient and irre-
47 sponsible persons, against whom an action and recovery of damages at law would be unavailing, etc., but does not give the names, nor state which of the defendants are so transient and irresponsible, so as to enable the defendants properly to answer said allegation.

3. The court has no jurisdiction of the persons of the defendants, nor of the subject matter of the action.

4. The complaint does not state facts sufficient to constitute a cause of action against said defendants, or either of them.

5. It appears upon the face of the complaint that the cause of action set forth therein was at the time of this action and is barred by the provisions of section 388 of the code of civil procedure of the State of California.

Wherefore defendants pray that they may be hence dismissed with their costs.

48 JAS. K. BYRNE,
BELCHER & BELCHER,
Att'ys for Defendants.

WILSON & WILSON,
A. B. DIBBLE,
Of Counsel.

(Endorsed:) Demurrer to complaint. Service of within demurrer by copy acknowledged this —— day of October, A. D. 1876.

P. VANCLIEF and
CHAS. E. FILKINS,
Atty's for Pl'ff.

Filed October 9, 1876.

J. M. THOMAS, *Clerk.*

STATE OF CALIFORNIA,
County of Sutter, ss:

I, J. M. Thomas, county clerk in and for Sutter county, State of California, and *ex-officio* clerk of the district court thereof, do hereby certify that the above and foregoing is a full, true and correct copy of the original
49 demurrer to complaint in the above entitled action, together with the indorsement thereon, as the same appears on file in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said district court, this the 18th day of December, A. D. 1876.

[SEAL.] J. M. THOMAS, *Clerk.*
By HENRY PIERSON, *Deputy.*

(Endorsed:) Filed January 31, 1877.

L. S. B. SAWYER, *Clerk.*
By J. F. O'BEIRNE, *Dep. Cl'k.*

50 *Motion to strike out portions of the Complaint.*

In the District Court of the Tenth Judicial District of the State of California, within and for the County of Sutter.

JAMES H. KEYES, Plaintiff,
vs.
LITTLE YORK GOLD WASHING AND WATER COMPANY, (Limited)—sued as "Little York Gold and Water Company, Limited)," CEDAR CREEK GOLD MINES AND WATER COMPANY, (Limited), BIRD'S-EYE CREEK GOLD MINING COMPANY, (Limited)—sued as "Bird's-Eye Gold, Silver and Copper Mining Company," FRANKLIN GRAVEL MINING COMPANY, POLAR STAR HYDRAULIC GOLD MINING COMPANY, ELMORE HILL HYDRAULIC MINING COMPANY, CHALK, MOUNTAIN BLUE GRAVEL MINING COMPANY, MINERS' DITCH COMPANY, JOHN P. STAPLES, CHAS. W. STAPLES, JAMES STAPLES, J. H. LEKAMP, B. HUYSINCK, WM. H. RAYMOND, JOHN HUSSEY, EDWARD CARNEY, P. L. GOODSPEED, H. E. TURNER, L. W. PREBLE, A. A. SARGENT, GEORGE F. JACOBS, AH WONG, H. KNIGHT, WM. KNIGHT, CONRAD WYCK, PHILIP WYCK, A. N. NUTTING, ALONZO COOPER, J. B. FRICK, AND G. A. FRICK, Defendants.

Now, by their attorneys, come the defendants above named, who have been served with process, and move to strike out from the complaint of the plaintiff, heretofore filed in this action, the following described portions thereof, on the ground that the same are irrelevant and redundant:

1. That portion of the said complaint beginning at line 12, page 9, of the printed copy of complaint served on defendants, with the words: "That said river," etc., and ending at line 20 of said page 9, with the words "for irrigating purposes."

52 2. That portion of the complaint beginning on line 3 of page 10 of said printed copy, with the words: "That from the mouth of said canyon," etc., and including the whole of the remainder of said page 10, and the whole of page 11, and down to and including line 5 of page 12.

3. The words "as is at least ten thousand acres of similarly situated land in the valley of Bear river," on lines 13, 14 and 15 of page 14.

4. The words "and other lands in the valley of Bear river," on lines 18 and 19 of page 14.

5. The whole of lines 26 to 30 inclusive of page 14 and lines 1 and 2 of page 15.

6. The words, "and upon the other lands in the valley of Bear river," on lines 28 and 29 of page 15.

JAS. K. BYRNE AND
BELCHER & BELCHER,
Att'ys for Defendants.

WILSON & WILSON, AND
A. B. DIBBLE,
Of Counsel.

53 (Endorsed): Motion to strike out.

Service of the within motion by copy is acknowledged this 9th day of October, 1876.

P. VAN CLIEF AND
CHAS. E. FILKINS,
Att'ys for Plaintiff.

Filed October 9, 1876.

J. M. THOMAS, *Clerk.*

OFFICE OF THE COUNTY CLERK, *of the County of Sutter*, } ss.

I, J. M. Thomas, county clerk of the county of Sutter, State of California, and ex-officio clerk of the tenth district court, in and for the said county and State aforesaid, hereby certify that I have compared the foregoing copy with the original "Motion to strike out" in the above entitled action, filed in my office on the ninth day of October, A. D. 1876, and that the same is a full, true, and correct copy of such original, and of the whole thereof.

54 Attest: My hand and seal of said court, this second day of February, A. D. 1877.

[SEAL.]

J. M. THOMAS,
Clerk District Court.

(Endorsed): Filed January 31, 1877.

L. S. B. SAWYER, *Clerk.*

55 *Petition for transfer of cause to U. S. circuit court.*

In the District Court of the Tenth Judicial District of the State of California, within and for the County of Sutter.

JAS. H. KEYES, Pl'ff,
vs
LITTLE YORK GOLD WASHING AND WATER COMPANY (Limited), *et al*, Def'ts.

To the honorable the district court of the tenth judicial district, within and for the county of Sutter, State of California:

The petition of the Little York Gold Washing and Water Company, Limited (sued as Little York Gold and Water Company, Limited); Cedar Creek Gold Mines and Water Company, Limited; Birdseye Creek Gold Mining Company, Limited (sued as Birds-eye Gold, Silver and Copper
56 Mining Company); Franklin Gravel Mining Company; Polar Star

50 *Motion to strike out portions of the Complaint.*

In the District Court of the Tenth Judicial District of the State of California, within and for the County of Sutter.

JAMES H. KEYES, Plaintiff,

vs.

LITTLE YORK GOLD WASHING AND WATER COMPANY, (Limited)—sued as "Little York Gold and Water Company, Limited)," CEDAR CREEK GOLD MINES AND WATER COMPANY, (Limited), BIRD'S-EYE CREEK GOLD MINING COMPANY, (Limited)—sued as "Bird's-Eye Gold, Silver and Copper Mining Company," FRANKLIN GRAVEL MINING COMPANY, POLAR STAR HYDRAULIC GOLD MINING COMPANY, ELMORE HILL HYDRAULIC MINING COMPANY, CHALK, MOUNTAIN BLUE GRAVEL MINING COMPANY, MINERS' DITCH COMPANY, JOHN P. STAPLES, CHAS. W. STAPLES, JAMES STAPLES, J. H. LEKAMP, B. HUYSINCK, WM. H. RAYMOND, JOHN HUSSEY, EDWARD CARNEY, P. L. GOODSPEED, H. E. TURNER, L. W. PREBLE, A. A. SARGENT, GEORGE F. JACOBS, AH WONG, H. KNIGHT, WM. KNIGHT, CONRAD WYCK, PHILIP WYCK, A. N. NUTTING, ALONZO COOPER, J. B. FRICK, AND G. A. FRICK, Defendants.

Now, by their attorneys, come the defendants above named, who have been served with process, and move to strike out from the complaint of the plaintiff, heretofore filed in this action, the following described portions thereof, on the ground that the same are irrelevant and redundant:

1. That portion of the said complaint beginning at line 12, page 9, of the printed copy of complaint served on defendants, with the words: "That said river," etc., and ending at line 20 of said page 9, with the words "for irrigating purposes."

52 2. That portion of the complaint beginning on line 3 of page 10 of said printed copy, with the words: "That from the mouth of said canyon," etc., and including the whole of the remainder of said page 10, and the whole of page 11, and down to and including line 5 of page 12.

3. The words "as is at least ten thousand acres of similarly situated land in the valley of Bear river," on lines 13, 14 and 15 of page 14.

4. The words "and other lands in the valley of Bear river," on lines 18 and 19 of page 14.

5. The whole of lines 26 to 30 inclusive of page 14 and lines 1 and 2 of page 15.

6. The words, "and upon the other lands in the valley of Bear river," on lines 28 and 29 of page 15.

JAS. K. BYRNE AND
BELCHER & BELCHER,
Att'ys for Defendants.

WILSON & WILSON, AND
A. B. DIBBLE,
Of Counsel.

53 (Endorsed): Motion to strike out.

Service of the within motion by copy is acknowledged this 9th day of October, 1876.

P. VAN CLIEF AND
CHAS. E. FILKINS,
Att'ys for Plaintiff.

Filed October 9, 1876.

J. M. THOMAS, *Clerk.*

OFFICE OF THE COUNTY CLERK, }
of the County of Sutter, } ss.

I, J. M. Thomas, county clerk of the county of Sutter, State of California, and ex-officio clerk of the tenth district court, in and for the said county and State aforesaid, hereby certify that I have compared the foregoing copy with the original "Motion to strike out" in the above entitled action, filed in my office on the ninth day of October, A. D. 1876, and that the same is a full, true, and correct copy of such original, and of the whole thereof.

54 Attest: My hand and seal of said court, this second day of February, A. D. 1877.

[SEAL.]

J. M. THOMAS,
Clerk District Court.

(Endorsed): Filed January 31, 1877.

L. S. B. SAWYER, *Clerk.*

55 *Petition for transfer of cause to U. S. circuit court.*

In the District Court of the Tenth Judicial District of the State of California, within and for the County of Sutter.

JAS. H. KEYES, Pl'ff,
vs
LITTLE YORK GOLD WASHING AND WATER COMPANY (Limited), *et al.*, Def'ts.

To the honorable the district court of the tenth judicial district, within and for the county of Sutter, State of California:

The petition of the Little York Gold Washing and Water Company, Limited (sued as Little York Gold and Water Company, Limited); Cedar Creek Gold Mines and Water Company, Limited; Birdseye Creek Gold Mining Company, Limited (sued as Birds-eye Gold, Silver and Copper
56 Mining Company); Franklin Gravel Mining Company; Polar Star

Hydraulic Gold Mining Company, Elmore Hill Hydraulic Mining Company, Chalk Mountain Blue Gravel Company, Miners' Ditch Company, John P. Staples, Charles W. Staples, James Staples, J. H. Le Kamp, B. Huysink, W. H. Raymond, John Hussey, Edward Carney, P. L. Goodspeed, H. E. Turner, L. W. Preble, A. A. Sargent, George F. Jacobs, Ah Wing, H. Knight, Wm. Knight, Conrad Wyck, Philip Wyck, A. N. Nutting, Alonzo Cooper, J. B. Frick and G. A. Frick respectfully shows to the court:

That your petitioners comprise all of the defendants in the above entitled suit, and that the same was brought by James H. Keyes, plaintiff therein, on or about the 28th day of July, A. D. 1876, in the said district court, to be held in the county of Sutter, State of California, and being in the tenth judicial district of said State.

57 That the said plaintiff is now, and was at the time of the commencement of said suit, a citizen of the State of California. And your petitioners further respectfully represent that this suit is brought by plaintiff to perpetually enjoin and restrain your petitioners, the defendants in said suit, from depositing the tailings and debris from their several and respective mining claims, situated in the counties of Placer and Nevada, State of California, in the channels of Bear river or any of its tributaries, and from suffering said tailings and debris from flowing into said river or any of its tributaries, and also from fouling or polluting the waters of said river or any of its tributaries with said tailings or debris.

That the plaintiff alleges in his complaint in said suit that your petitioners, by depositing such tailings and debris in the channels of Bear river and its tributaries, have caused them to be washed and
58 deposited on plaintiff's land, in the county of Sutter, in said State of California, and thereby injured the said land, and interfered with the comfortable use and enjoyment thereof by the plaintiff, and alleges that your petitioners threaten and intend to repeat and continue the said acts until the plaintiff shall be thereby totally deprived of the use and enjoyment of his said land, and the fixtures and improvements thereon. Your petitioners further represent that they are the owners of certain extensive and valuable gold-bearing placer mines situated in the counties of Placer and Nevada, in said State of California, which they claim under the laws of the United States, and are engaged in working the same by what is known as the hydraulic process of mining; that said hydraulic process necessarily requires the employment of large heads or streams of water, used through pipes
59 or hose, under heavy pressure, for the purpose of loosening or washing the gold-bearing earth and gravel contained in said mining claims, into large flumes, where the gold is separated from the earth by the action of the water, and is retained. That the gold in said claims is distributed in very fine particles throughout the entire gravel deposit, and cannot be obtained in any other manner, nor can said mining claims of your petitioners be worked in any other manner save by said hydraulic process; that in working said mines your petitioners necessarily deposit in the channels of Bear river and its tributaries large quantities of tailings from said mines; that the said Bear river and its tributaries are the natural and only outlets for said hydraulic

gold mines, and your petitioners claim the right to work, use and operate said mines, and in so doing to use the channels of Bear river and its tributaries as a place of deposit for their said tailings, under
60 the provisions of the act of Congress of the United States entitled, "An act granting the right of way to ditch and canal owners over the public lands, and for other purposes," passed July 26th, 1866, and the act amendatory thereof, passed July 9th, 1870, and the "Act to promote the development of the mining resources of the United States, passed May 10th, 1872, and other laws of the United States."

That said action arises under, and that its determination will necessarily involve and require the construction of the laws of the United States above mentioned, as well as the pre-emption laws of the United States. That the mines of your petitioners are of great value, to wit: of an aggregate value of not less than ten millions of dollars; and that if your petitioners are prevented from using the said channels of Bear river and its tributaries as outlets for their said tailings and water, their said mines will be thereby rendered wholly valueless.
61 Your petitioners further represent that this is a suit of a civil nature, in equity, and that the matter in dispute exceeds, exclusive of costs, the sum of five hundred dollars, and that this suit arises under the laws of the United States; that the circuit court of the United States, in and for the ninth judicial district, which includes the State of California, has jurisdiction of the persons and of the subject matter of the action in said suit. Your petitioners further represent that this suit has not yet been tried, but that the same is pending for trial in said district court of the tenth judicial district of the State of California, and that no term of said court has been held in the said county of Sutter since the commencement of this suit.

That a term of said court for the county of Sutter will commence
62 on Monday, the 13th day of November, A. D. 1876, for the November term. That said November term is the term of said court at which this case could first be tried; and that your petitioners desire to remove this suit, before the trial thereof, into the next circuit court of the United States, to be held in said ninth judicial circuit and district of California, being, as aforesaid, the same district in which the suit is pending, in pursuance of the provisions of the Act of Congress of the United States, entitled "An Act to determine the jurisdiction of the circuit court of the United States, and to regulate the removal of causes from State courts, and for other purposes," approved March 3d, 1875, and the other laws of the United States relating to the removal of causes from State courts to courts of the United States; and your petitioners further represent, that they are ready and willing to give
63 such good and sufficient surety as this court may direct, for doing all acts and things required to be done by them, by the provisions of law, upon the removal of a suit from a State court into the circuit court of the United States; and they herewith offer, as such good and sufficient surety, a bond executed by A. H. Hagadorn as principal, and Jas. P. Pierce and Thomas Price as sureties, in the penal sum of one thousand dollars, conditioned that your petitioners shall enter, in the next circuit court of the United States, to be held in the district of California, a copy of the record in this suit, and shall pay all costs

that may be awarded by said circuit court, if such court shall hold that such suit was wrongfully or improperly removed thereto; and also shall appear in said circuit court and enter special bail in such suit, if special was originally requisite therein, and shall do such other
64 appropriate acts as by the said laws of the United States are required to be done on the removal of a suit from a State court to the United States court, and herewith present and file said bond.

And your petitioners pray that this hon. court will accept this petition and the said bond, and that said suit may be removed into the next circuit court of the United States, to be held in the district of California, in the ninth judicial circuit, pursuant to the statutes of the United States in such cases made and provided, and that as further proceedings may be had therein in this court. And your petitioners will ever pray, etc.

GEO. F. JACOBS,
Little York Gold Washing and Water Co. (Limited)
By A. H. HAGADORN, Manager,
65 *For selves and all the above named defendants.*
JAS. K. BYRNE AND
BELCHER & BELCHER,
Att'ys for defendants.

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss.*

A. H. Hagadorn, being duly sworn, deposes and says, that he is Manager of the Little York Gold Washing and Water Company (Limited), a corporation, one of the defendants in the above entitled action; that he has subscribed said petition in behalf of his said company, and in behalf of all the defendants above named; that he has heard the foregoing petition read, and knows the contents thereof, and that the same is true of his own knowledge, except the matters and things therein stated on his information or belief, and as to those matters, that he believes it to be true.

A. H. HAGADORN.

Subscribed and sworn to before me, this 10th day of November, A. D. 1876.

[SEAL.]

JAMES L. KING,
Notary Public.

STATE OF CALIFORNIA, }
66 *City and County of San Francisco,* } *ss.*

George F. Jacobs, being duly sworn, deposes and says, that he is one of the defendants in the above entitled action; that he has subscribed the foregoing petition on his own behalf, and in behalf of all the other defendants; that he has heard said petition read, and knows the contents thereof; that the same is true of his own knowledge, except the matters stated therein on information or belief, and that as to those matters, he believes it to be true.

GEORGE F. JACOBS.

Subscribed and sworn to before me, this 16th day of November, A. D. 1876.

[SEAL].

JAMES L. KING,
Notary Public.

67 [Endorsed]: Petition for removal of cause into U. S. circuit court. Service by copy acknowledged this 28th day of November, A. D. 1876.

P. VANCLIEF,
Att'y for Pl'ff.

Filed Nov. 8th, 1876.

J. M. THOMAS, *Clerk.*
By H. G. PIERSON, *Deputy.*

STATE OF CALIFORNIA, } ss.
County of Sutter, }

I, J. M. Thomas, county clerk, and *ex officio* clerk of the district court in and for Sutter county, State of California, do hereby certify, that the above and foregoing is a full, true and correct copy of the original petition for removal of cause into U. S. circuit court, together with the endorsements thereon, as the same appears on file in my office.

Witness my hand and official seal, this the 18th day of December, A. D. 1876.

[SEAL.]

J. M. THOMAS, *Clerk.*
By HENRY PIERSON, *Deputy.*

68 [Endorsed]: Filed January 31, 1877.

L. S. B. SAWYER, *Clerk.*
By J. F. O'BEIRNE, *Dep. Clk.*

[Title of court and cause.]

69 *Bond on transferring cause to U. S. Circuit Court.*

Know all men by these presents:

That we, A. H. Hagadorn, of Little York township, Nevada county, State of California, as principal, and James P. Pierce, of Santa Clara county, and Thomas Price, of San Francisco, in said State, as sureties, are held and firmly bound unto James H. Keyes, of the county of Sutter, in said State, in the sum of one thousand dollars, lawful money of the United States of America, to be paid to the said James H. Keyes, his heirs, executors, administrators or assigns; for which
70 payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the tenth day of November, A. D. 1876.

Whereas, a suit was brought by the above named James H. Keyes, against the above named defendants, on or about the 28th day of July, A. D. 1876, in the district court of the tenth judicial district, in and for the county of Sutter, and State of California, and the same is now pending for trial in said tenth district court, in said county

of Sutter, and is removable into the circuit court of the United States, for the district of California, in the ninth judicial circuit, under the Act of Congress of the United States, entitled "An Act to determine the jurisdiction of the circuit court of the United States,
71 and to regulate the removal of causes from State courts, and for other purposes," approved March 3, 1875, and other statutes of the United States.

And whereas, the defendants in said suit have filed their petition in said district court of the tenth judicial district of the State of California, in and for said county of Sutter, for the removal of said suit into the next circuit court of the United States, to be held in the district of California, in the ninth judicial circuit.

Now, therefore, the condition of the above obligation is such that if the defendants in the above entitled suit shall enter in the next circuit court of the United States, to be held in the district of California, in the ninth judicial circuit, on the first day of its session, a copy of the record in said suit, and shall pay all costs that may be awarded by the said circuit court of the United States, if such court shall hold that such suit was wrongfully or improperly removed
72 thereto, and shall also appear in said circuit court and enter special bail, if special bail was originally requisite therein, and shall do such other necessary and appropriate acts as by the said Acts of Congress are requisite to be done upon the removal of a cause from a State court to the circuit court of the United States, then the above obligation to be void, otherwise to remain in full force and virtue.

A. H. HAGADORN. [SEAL.]
JAS. P. PIERCE. [SEAL.]
THOMAS PRICE. [SEAL.]

Sealed and delivered in the presence of—
JAS. K. BYRNE.

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss.

James P. Pierce and Thomas Price, the sureties named in the fore-
73 going obligation, being duly severally sworn, each for himself deposes and says that he is a resident of the State of California, and a householder therein, and is worth the sum of one thousand dollars over and above all his just debts and liabilities, exclusive of property exempt from execution.

JAMES P. PIERCE.
THOMAS PRICE.

Subscribed and sworn to before me this 10th day of November, A. D. 1876.

[NOTARY SEAL.]

E. V. JOICE,
Notary Public.

(Endorsed:) Bond accompanying petition to remove suit into U. S. circuit court.

Service by copy is hereby admitted this 28th day of November, 1876.

P. VAN CLIEF,
Att'y for Pl'ff.

74 Approved this 8th day of Jan. 1877.

PHIL. W. KEYSER,
Dist. Judge.

Filed, Nov. 28th, 1876. J. M. THOMAS, *Clerk.*
By H. G. PIERSON, *Dept.*

STATE OF CALIFORNIA, }
County of Sutter, } ss.

I, J. M. Thomas, county clerk in and for Sutter county, and ex-officio clerk of the district court thereof, do hereby certify that the above and foregoing is a full, true, and correct copy of the original bond accompanying petition to remove suit into U. S. circuit court in the above entitled action, together with the endorsements thereon, as the same appears on file in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court, this 17th day of January, A. D. 1877.

[SEAL.] J. M. THOMAS, *Clerk.*

75 (Endorsed:) Filed, January 31st, 1877.

L. S. B. SAWYER, *Clerk.*
By J. F. O'BEIRNE, *Dep. Cl'k.*

76 *Notice of motion to remove suit to U. S. Circuit Court.*

In the District Court of the Tenth Judicial District of the State of California, within and for the County of Sutter.

JAMES H. KEYES, Pl'ff,
vs.
LITTLE YORK GOLD WASHING AND WATER COMPANY *(Limited). et al.,* Defts.

The plaintiff and his attorneys will please take notice, that on the petition of all the defendants in the above entitled suit, and the bond accompanying the same (copies of which petition and bond are herewith served), and on all the papers and proceedings, files, records, and minutes of the court in this suit, we will move this honorable court, at the court-room thereof, at the court-house in Yuba City, California, on Saturday, the 2d day of December, A. D. 1876, at the opening of court on said day, or as soon thereafter as counsel can be heard,
77 for an order accepting said petition and bond, and removing this suit from the said district court of the tenth judicial district of the State of California to the circuit court of the United States for the district of California, in the ninth judicial circuit, and staying all proceedings in this suit in the said State court, under the provisions of the act of Congress of the United States providing for the removal of causes from State courts to the courts of the United States.

Dated Nov. 28, 1876.

JAMES K. BYRNE AND
BELCHER & BELCHER,
Attorneys for Defendants.

[Endorsed]: Notice of motion to remove suit into U. S. circuit court. Service of within notice by copy admitted this 28th day of November, 1876.

P. VANCLIEF,
Att'y for Pl'ff.

78 Filed Nov. 28, 1876.

J. M. THOMAS, *Clerk.*
By H. G. PIERSON, *Deputy.*

STATE OF CALIFORNIA, } ss.
County of Sutter, }

I, J. M. Thomas, county clerk in and for Sutter county, State of California, and *ex officio* clerk of the district court thereof, do hereby certify that the above and foregoing is a full, true and correct copy of the original notice of motion to remove suit into U. S. circuit court in the above entitled action, together with the endorsements thereon, as the same now appears on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this the 18th day of December, A. D. 1876.

J. M. THOMAS, *Clerk.*
By HENRY PIERSON, *Deputy.*

[Endorsed]: Filed January 31, 1877.

L. S. B. SAWYER, *Clerk.*
By J. F. O'BEIRNE, *Dep. Cl'k.*

79 *Order transferring cause to U. S. Circuit Court.*

In the District Court of the Tenth Judicial District, in and for Sutter County, California.—January 8th, 1877.

District court met pursuant to adjournment.
Present: Hon. Phil. W. Keyser, district judge, clerk and sheriff.
When, among other proceedings had, was the following:

JAMES H. KEYES
vs.
LITTLE YORK GOLD WASHING AND WATER CO. (*Limited*), *et al.*

On motion of I. S. Belcher, Esq.:

It is ordered, that this cause be and the same is hereby transferred to the United States circuit court of the district of California, in the ninth judicial circuit, for trial.

PHIL. W. KEYSER,
District Judge.

80 OFFICE OF THE COUNTY CLERK } ss.
Of the county of Sutter, State of California, }

I, J. M. Thomas, county clerk, and *ex officio* clerk of the district court of the tenth judicial district, in and for said county, hereby

certify the foregoing to be a full, true and correct copy of the order transferring the above entitled cause to the United States circuit court of the district of California, duly made and entered upon the minutes of the said court, and that I have compared the same with the original; that it is a correct transcript therefrom, and of the whole thereof.

Witness my hand and the seal of said court, this 17th day of January, A. D. 1877.

[SEAL.] J. M. THOMAS, *Clerk.*

[Endorsed]: Filed January 31st.

L. S. B. SAWYER, *Clerk.*
By J. F. O'BEIRNE, *Dep. Cl'k.*

81 *Notice of motion to remand cause to State Court.*

In the Circuit Court of the United States, District of California.

JAMES H. KEYES, Plaintiff,
vs
LITTLE YORK GOLD AND WATER COMPANY (Limited), *et al*, Defendants.

Messrs. Jas. K. Byrne and Belcher & Belcher:

The attorneys for the defendants in the above entitled cause will please take notice that at the opening of the above court, on the 12th day of March, 1877, or as soon thereafter as counsel can be heard, we will move the honorable court to remand the above entitled cause to the district court of the tenth judicial district, in and for the county of Sutter, of the State of California, for trial and further proceedings, upon this ground:

82 1. That the law of March 3d, 1875, entitled "An act to determine the jurisdiction of the circuit courts of the United States, and to regulate the removal of causes from State courts, and for other purposes," did not and does not authorize the removal of this cause to this court for trial.

2. Because the petition for the removal of this cause to this court does not state facts sufficient in law to authorize such removal, or to vest jurisdiction over said cause in this court, and because the complaint herein, and said petition, show that no federal question is involved, and that the defense to his suit does not arise under the constitution or laws of the United States.

Because this court has no jurisdiction to hear and determine this cause.

In support of this motion, and upon the hearing thereof, we will read the complaint of the plaintiff herein, defendants' petition for the removal of said cause to this court, and the order of the tenth judicial 83 district, in and for the county of Sutter, State of California, authorizing or sanctioning the removal of this cause to this court.

GEO. CADWALADER,
P. VANCLIEF,
Att'ys for Plaintiff.

(Endorsed:) Service of a copy hereof admitted this 8th day of March, 1877.

BELCHER & BELCHER, and
JAS. K. BYRNE,
Attorneys for defendants.

Filed M'ch 1st, 1877.

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *Dep. Cl'k.*

Order remanding cause to State Court.

84 At a stated term, to wit: the July term, 1877, of the circuit court of the United States of America, held at the court room, in the city of San Francisco, on Monday, the 30th day of July, in the year of our Lord one thousand eight hundred and seventy-seven:

Present: The honorable Stephen J. Field, associate justice of the supreme court of the United States.

JAMES H. KEYES,
vs
LITTLE YORK GOLD WASHING AND WATER COMPANY (Limited), *et al.*

This cause came on to be heard at this term, and was argued by counsel, and thereupon, upon consideration thereof, it appearing to the satisfaction of this court, that this cause was removed to this
85 court from the district court of the tenth district of the State of California, in and for the county of Sutter, under and in pursuance of the act of Congress entitled, "An act to determine the jurisdiction of the circuit court of the United States, and to regulate the removal of causes from State courts, and for other purposes," approved March 3d, 1875; and it appearing on the face of the bill that this bill does not really and substantially involve a dispute or controversy properly within the jurisdiction of this court: It is therefore ordered, adjudged and decreed that the demurrer to the bill be sustained on this ground, and that this suit be and is hereby remanded to the said tenth district court, from which it was removed, at the costs of the defendants herein.

85½ In the Circuit Court of the United States, Ninth Circuit District of California.

JAMES H. KEYES,
vs.
LITTLE YORK GOLD WASHING AND WATER COMPANY, Limited, *et al.*

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States for the district of California, do hereby certify that the foregoing papers hereto annexed constitute the enrolled papers in the therein entitled cause.

Witness my hand and the seal of said circuit court, this 30th day of July, A. D. 1877. L. S. B. SAWYER, *Clerk.*
[SEAL.] By J. F. O'BEIRNE, *Dep. Clk.*
(Endorsed:) Enrolled papers.
Filed 30th July, 1877. L. S. B. SAWYER, *Clerk.*
By J. F. O'BEIRNE, *Dep. Clk.*

86 *Bond on appeal.*

In the Supreme Court of the United States.

JAMES H. KEYES,
vs.
THE LITTLE YORK GOLD WASHING AND WATER COMPANY, Limited, *et al.*

Know all men by these presents:

That we, Alvinza Hayward and James P. Pierce, are held and firmly bound unto James H. Keyes, in the sum of five hundred dollars, to be paid to the said James H. Keyes, his heirs, executors, or administrators.

To which payment, well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals. Dated this 2d day of August, A. D. 1877.

Whereas, the above named, The Little York Gold Washing and
87 Water Company (Limited), and the other defendants in the above entitled action, have prosecuted a writ of error to the supreme court of the United States of America, to reverse the order entered in the above entitled action, remanding said cause to the 10th judicial district court of the State of California, in and for the county of Sutter.

Now, therefore, the condition of this obligation is such that if the above-named, The Little York Gold Washing and Water Company (Limited), and co-defendants in said above entitled action, shall prosecute their said writ of error to effect and answer all costs if they shall fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and virtue.

ALVINZA HAYWARD. [SEAL.]
JAS. P. PIERCE. [SEAL.]

Signed, sealed and delivered in the presence of—
JOS. F. O'BEIRNE.

88 UNITED STATES OF AMERICA, } ss.
District of California, }

Alvinza Hayward and James P. Pierce, being duly sworn, each for himself, deposes and says, that he is a householder in said district, and is worth the sum of five hundred dollars, exclusive of property exempt from execution, and over and above all his just debts and liabilities.

ALVINZA HAYWARD.
J. P. PIERCE.

Sworn to before me, this 2d day of August, A. D. 1877.
JOS. F. O'BEIRNE,
Comm'r of U. S. Circuit Court, Cal.
Approved: STEPHEN J. FIELD,
Associate Justice of the U. S. Supreme Court.
(Endorsed:) Filed August 6, 1877.
L. S. B. SAWYER, *Clerk.*
By J. F. O'BEIRNE, *Deputy Clerk.*

89 I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States, for the district of California, do hereby certify that the foregoing eighty-eight pages, numbered from one to eighty-eight inclusive, contain a full, true and correct copy of the Record and proceedings in the cause therein entitled, and that the same together constitutes the return to the annexed writ of error.

Attest my hand and seal of said circuit court, this seventh day of September, A. D. 1877. L. S. B. SAWYER, *Clerk.*
[SEAL.] By J. F. O'BEIRNE, *Deputy Clerk.*

Stipulation.

In the Supreme Court of the United States:

LITTLE YORK GOLD WASHING AND WATER COMPANY (Limited), *et al*,
Plaintiffs in error,
vs
JAMES H. KEYES,
Defendant in error.

It is stipulated by and on the part of the plaintiffs and defendants in error in the above entitled cause, that said cause shall be placed on the calendar of the said court at the next term thereof, commencing on the second Monday of October, 1877, and shall be submitted upon briefs to be filed in said court within seven days from the first day of said term.

Dated August 22, 1877.

JAS. K. BYRNE and
BELCHER & BELCHER,
Attorneys for Plaintiffs in error.

A. B. DIBBLE,
WILSON & WILSON,
Of Counsel for Plaintiffs in error.

P. VANCLIEF,
Attorney for Def't in error.

GEO. CADWALADER,
Of Counsel for Def'ts in error.

No.

IN THE

SUPREME COURT

OF THE

UNITED STATES

LITTLE YORK GOLD WASHING AND WATER COMPANY, LIMITED, et al.

Plaintiffs in Error.

VS.

JAMES H. KEYES,

Defendant in Error.

BRIEF OF PLAINTIFFS IN ERROR.

S. M. WILSON,
Of Counsel for Plaintiffs in Error.

IN THE SUPREME COURT

OF THE

UNITED STATES.

LITTLE YORK GOLD WASHING AND WATER COMPANY, LIMITED, ET. AL.,
Plaintiffs in error,

vs.

JAMES H. KEYES,
Defendant in error.

Brief of Plaintiffs in Error.

This is a suit in equity brought in the District Court of the Tenth Judical District of the State of California, in and for the county of Sutter.

The defendant in error was the plaintiff in the court below.

The complaint was filed on the 29th of July, 1876. Process being served upon the defendants, they filed a demurrer to the complaint on the 9th of October, 1876.

Rec.—fols. 20–46.

On the 8th of November, 1876, the defendants filed their petition for the removal of the cause to the Circuit Court of the United States.

Rec.—fols. 55–67

They also filed a bond in pursuance of the Act of Congress, which was approved by the Judge.

Rec.—fols. 69–74.

On the 8th of January, 1877, an order was made removing the cause, and thereupon the papers were filed in the Circuit Court.

Rec.—fols. 79–80.

On the 1st of March, 1877, the counsel for the plaintiff gave notice of a motion to remand the cause to the State Court.

Rec.—fols. 81–83.

The motion was granted, and an order made remanding the cause.

Rec.—fols. 84–85.

The case is brought to this Court by a writ of error to the Circuit Court, and we assign as error the order remanding the cause.

The order was made on the ground that the case did not involve any dispute or controversy within the jurisdiction of the Court. This appears on the face of the order.

The nature and objects of the suit and the character of the defense to be made are concisely stated in the petition for removal.

The plaintiff is the owner of certain lands situated on Bear River, in the State of California, and the suit is for an injunction to restrain the defendants from depositing in the channel of the River and its tributaries "tailings and debris" washed from certain placer mines owned and worked by them.

The petition shows that the mines are of great value, and that the deposit of such "tailings and debris" in the manner complained of cannot be avoided without abandoning the mines. After setting forth the facts in that respect, the petition states that the defendants claim the right to work, use, and operate, said mines, and in so doing to use the channel of Bear River and its tributaries as a place of deposit for their "tailings and debris," under the provisions of certain Acts of Congress therein specified; and the petition further states, that the suit is one arising under these acts, and that their construction will be involved and required in its determination.

The additional facts necessary to entitle the defendants to a removal are fully set forth in the petition, and the only question is whether the statements of the petition are sufficient with reference to the character of the suit as arising under the laws of the United States. If they are, we submit that the cause was improperly remanded.

The second section of the Act of March 3d, 1875, authorizes the removal of "any suit of a civil nature at law or in equity * * * arising" under the constitution or laws of the United States.

Stat. 1874-5, p. 470.

The Constitution, Article six, declares that the judicial power of the United States "shall extend to all cases in law and equity arising under this Constitution and the laws of the United States."

The Court will see that the provisions are substantially the same, except that the Constitution does not limit the power to cases of a civil nature.

The statute is new, and its construction in the particular now before the Court, has not been settled by judicial interpretation; but the provision of the Constitution has frequently been passed upon by the Courts, and the decisions on the subject would seem to be applicable.

In the case of *The Mayor* vs. *Cooper*, 6 Wal., 247, the Court, in speaking of this provision, said: "Nor is it any objection that questions are involved which are not at all of a Federal character. If one of the latter exist, if there be a single such ingredient in the mass, it is sufficient. That element is decisive upon the subject of jurisdiction. A case in law or equity consists of the right of one party as well as the other, and may be truly said to arise under the Constitution or a law of the United States whenever its correct decision depends upon the right construction of either. The rule applies with equal force where the plaintiff claims a right, and where the defendant claims a protection, by virtue of one or the other." And the Court adds: "It is the right and duty of the National Government to have its Constitution and laws interpreted and applied by its own judicial tribunals." See also

Martin vs. *Hunter's Lessee*, 1 Wheaton, 304;

Cohens vs. *Virginia*, 6 Id., 264; and
Osborn vs. *The Bank of the United States*,
9 Id., 738.

If the case at bar is not within the principle of these decisions, it is because the language of the statute must receive a different construction from the same language used in the Constitution. We think the construction should be the same, and that the statute applies to all civil suits to which the judicial power of the United States extends under the constitutional provision alluded to. In other words, the right of removal in civil cases, and the jurisdiction of the Circuit Courts consequent upon such removal, were intended to be co-extensive with the grant of power in the Constitution.

If we are correct in this, the case is easily solved. The defendants claim protection under certain Acts of Congress. They assert in their petition that these Acts give them the right to do what the plaintiff is seeking to enjoin them from doing. Whether the right asserted by them is well founded or not must depend upon the construction and effect of the Acts under which it is claimed. Being Acts of Congress, their construction is peculiarly the province of the Federal tribunals; and it is clear that the case is one arising under the laws of the United States within the meaning of the decisions we have cited. But the fact that it does so arise is expressly stated in the petition, and this alone was sufficient to justify the removal. Nothing more was required in the petition than to follow the language of the statute. Judge Dillon, in

a recent treatise on the subject, p. 32, says: "The careful practitioner will follow the exact language of the statute in stating the grounds for the removal."

The petition was undoubtedly sufficient to effect a removal, and the cause was remanded simply on the complaint and petition.

Another argument in favor of the jurisdiction of the Circuit Court is found in the fact that if the case should proceed in the State Court, it may eventually be brought to this Court by a writ of error. The defendants may set up their rights under these Acts of Congress, and if the decision should be against them, this Court can issue its writ and bring the case here for review.

Delmas vs. *Insurance Company*, 14 Wal. 661.
Hall vs. *Jordan*, 15 Id. 393.
Crapo vs. *Kelly*, 16 Id. 610.

These cases are strictly analogous to the case at bar, and they show that a Federal question is necessarily involved whenever a right is claimed under the Constitution or a law of the United States. The fact of the right being claimed raises the question, and whether it can be maintained or not is immaterial in respect to the jurisdiction. It is true, a writ of error will not lie merely because a Federal question has been decided by a State Court; but under the statute in regard to removals, it is enough if the question exists and must be detemined. A removal is authorized for the purpose of a trial.

We will only say in conclusion, that the case is entirely different from any of the cases in which writs of error have been dismissed for want of jurisdiction. *Romie* vs. *Casanova*, 1 Otto, 379, and *McStay* vs. *Friedman*, 2 Otto, 723, may be referred to as examples of these cases. The actions were ejectment, and in each case the parties claimed under a common grantor, whose title had been acquired from the United States. No question was made as to the validity or character of this title, and as a matter of course there was nothing to give jurisdiction to the Court. There are many other cases, but an examination of them would be useless labor. They were decided on grounds which have no application here.

We respectfully ask that the order of the Circuit Court remanding the cause be reversed.

S. M. WILSON,

Of Counsel for Plaintiffs in Error.

No.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

Little York Gold Washing and Water Company (Limited), et al.,

PLAINTIFFS IN ERROR,

vs.

JAMES H. KEYES,

DEFENDANT IN ERROR.

In Error from the Circuit Court of California.

P. VAN CLIEF,
Attorney for Defendant in Error.

GEO. CADWALADER,
Of Counsel.

Filed *1877.*

Clerk.

By *Dep. Clerk.*

SACRAMENTO:
H. S. CROCKER & CO., PRINTERS AND STATIONERS.
1877.

No._____

IN THE

SUPREME COURT

OF THE

UNITED STATES.

Little York Gold Washing and Water Company (Limited) et al.,
Plaintiffs in Error,

vs.

James H. Keyes,
Defendant in Error.

Statement of Facts.

This case comes here on a writ of error from the Circuit Court of the District of California.

The order to be reviewed is one made by that Court at its July term, 1877, wherein it was ordered that the cause be remanded to the State

Court in which it was begun and from where it was removed by proceedings under the Act of Congress of March 3d, 1875, entitled "an Act to determine the jurisdiction of the Circuit Court of the United States, and to regulate the removal of causes from State Courts, and for other purposes."

The cause stated in the order is that the suit does not really and substantially involve a dispute or controversy within the jurisdiction of this Court. (Transcript, page 28.)

This was an equitable action to enjoin a nuisance, and the substance of the complaint is, that the several plaintiffs in error own mining claims in the counties of Placer and Nevada, of the State of California, which they work by the "hydraulic process" of mining, whereby they deposit in Bear River and its tributaries large quantities of tailings, which are necessarily washed down the river to and upon land owned and possessed by the defendant in error, in such quantities as to interfere with and prevent the free and ordinary use by him of his land, to his irreparable damage, and that the plaintiffs in error intend to continue so doing unless enjoined.

The facts stated in the complaint make a case of private nuisance, which should be enjoined by

a Court of equity, and the only relief asked is an injunction. (Transcript, pages 9 to 16.)

The petition for the removal of the cause from the State Court to the Circuit Court of the United States, also alleges that the plaintiffs in error own said mining claims, and work them by the "hydraulic process," and deposit their tailings in Bear River and its tributaries.

There is nothing in the petition controverting the charges in the complaint, that the defendant in error owns his land, or that the tailings from the mines of the plaintiffs in error flow upon said lands. Indeed, it may be said that they admit the acts complained of, and its resulting damage, and say that it is the only way in which their mining claims can be profitably or successfully worked.

They claim the right to work their claims by "hydraulic washing," and to use the channel of Bear River as a place of deposit for their tailings, under the provisions of "an Act of Congress granting the right of way to ditch and canal owners over the public lands and for other purposes," passed July 26th, 1866; and the Act amendatory thereof, passed July 9th, 1870; and the "Act to promote the development of the mining resources of the United States,"

passed May 10th, 1872, and other laws of the United States. (Transcript, pages 20, 21.)

The only other allegation touching the jurisdiction of the Federal tribunals, lies in this averment of the petition, "that said action arises under, and that its determination will necessarily involve and require the construction of the laws of the United States above mentioned, as well as the preëmption laws of the United States." (Transcript, page 21.)

Upon the alleged necessity of construing these laws, the so-called "Federal jurisdiction" is based.

The motion to remand states the ground of the motion to remand, *i. e.*, that the petition for the removal, as well as the complaint, show that no "Federal question" is involved in the case.* †

Argument.

The petition for the removal of the cause is fatally defective in not stating the facts out of which the expected defence is to

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* The order remanding the case, by a clerical misprision, seems to have transformed our motion into a demurrer.

† Transcript, page 28.

arise, under the laws of the United States, or the facts showing that the case arises thereunder.

Here the petitioners cite separate laws of Congress, under which they say the action arises, and that its determination will involve their construction.

This is nothing more than the statement of a legal opinion.

In a case entitled Charles Trafton vs. P. T. Nougues, decided in the Ninth Circuit, on the 5th of February, 1877, the necessity of a petition for the removal of cause from a State Court, stating the facts from which the Court could see that a Federal question was involved, under the second section of the Act of March 3d, 1875, was very powerfully illustrated.

These extracts are made from that opinion:

"The precise facts should be stated out of which it is supposed the jurisdictional question will arise, and how it will arise should be pointed out, so that the Court can determine for itself whether the case is a proper one for consideration in the National Courts. Otherwise the administration of justice will be greatly obstructed, and intolerable inconvenience be the result."

"I think it of the highest importance to the rights of honest litigants, and to the due and

speedy administration of justice, that a petition for transfer should state the exact facts, and distinctly point out what the question is, and how and where it will arise, which will give jurisdiction to the Court, so that the Court can determine for itself from the facts whether the suit does really and substantially involve a dispute or controversy within its jurisdiction."

From an able pamphlet* on the "Removal of Causes from State to Federal Courts," I make this quotation:

"Where it is sought to remove a suit on the ground that it is one arising under the Constitution, or laws or treaties of the United States (Act of March 3d, 1875, Sec. 2), it should appear from the pleadings, or the petition for the removal, or both, that the case is one of this character. If this does not appear from the pleadings, that is, from the averment of facts therein, or the nature of the case made thereby, then it must be made to appear by the petition for the removal. And the Circuit Judge for the Ninth Circuit, in a recent opinion,† where the point is carefully examined, has reached the conclusion, and enforced it by very persuasive arguments, arising from the delay, inconvenience, and abuse which would follow from a different practice, that the petition for the removal must state the facts (unless they appear in the pleadings) which show the case to be one of Federal cognizance; and that it is not sufficient

* Second and revised edition, page 64, by John F. Dillon, Circuit Judge in Eighth Judicial Circuit.

† Trafton vs. Nougues.

to state generally that the case is one arising under the Constitution or laws of the United States."

But whether the petition is sufficiently specific or not, it does not make a case of jurisdiction for the Federal Courts.

Respecting one ground of removal, it must be conceded that it is a matter of no importance, so far as the National jurisdiction is concerned, whether the defendants can or cannot work their mining claims by any process except that which goes by the name of the *hydraulic*.

Nor is it of any Federal significance that the plaintiffs in error cannot avoid depositing the tailings or *debris* from their mines in the channels of Bear River.

There is no pretense of any legislation by Congress in derogation of the maxim, *Sic utere tuo alienum non laedas.*

The succeeding part of the petition is that in reference to the mining law of 1866, as amended in 1870 and 1872. Properly speaking, at the time the petition was filed there were no such laws in existence, and had not been for years. The reference to the preëmption laws of the United States is equally unfortunate. If the

plaintiffs in error meant certain sections of the Revised Statutes, it would have been easy for them to say so.

Imagining, however, and treating the reference to the mining laws as having been intended for sections 2319, 2320, 2321, and sections 2322, 2323, and 2324, of the Revised Statutes, and to the "preëmption laws," as intended to mean sections 2259 and 2260 of the Revised Statutes, nothing in any of the foregoing sections appears which gives color to the claims of the plaintiffs in error.

The so-called "preëmption law" simply gives the preference of the right of purchase to settlers of a certain class—the right to acquire the property in fee simple from the United States Government—to become the owners of land.

The mining laws so called, authorize the exploration of the public mineral lands, and also the right of occupation and possession of them "under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts, so far as the same are applicable to and not inconsistent with the laws of the United States. (Section 2319.)

No law of Congress prescribes or regulates the mode of working mining claims. Nothing is said upon the subject of working, except that a certain

amount of work in value must be done to prevent their relocation (while the title thereto remains in the government), and as a condition to the right of occupation or of purchase. The mode of this irrelevant work is not prescribed, and no question about it can arise in the case, for the reason that it appears both in our complaint and in our opponent's "petition for removal" that they own their mining claims. Thus we give them the benefit of their assertion that they own their mining claims, which is equivalent to saying that they have the highest estate therein known to the law—that they have acquired title thereto from the government of the United States under the laws passed by it for the disposal of its mineral domain.

So far as the mode of working mining claims is concerned, that can only be prescribed by the local legislation of the States or Territories, or the "mining districts" in which the claims are situate.

Questions as to the construction of such local laws would give no jurisdiction to the Federal Court.

In the case of Trafton vs. Nougues an analogous question arose which was disposed of in the following way:

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* It is believed to be foreign to the objects of the local mining laws or customs, to prescribe the manner of working mining claims.

"The act of Congress grants certain rights to those who discover, take up, and work mining claims; but it refers the parties to the local laws of the States and Territories, and to the rules, regulations, and customs of miners of the district where the mines are situated, for the measure of their rights. If a dispute arises, as in the case referred to, the act of Congress refers the parties to the ordinary tribunals, to determine it by the local laws and customs, and not by the act of Congress."

Even when disputes arise between different claimants to mining property, over their rights to acquire a title thereto from the United States, they are referred to the State Courts, for the determination of the dispute, and by whose judgment the United States agrees to issue its title. (Section 2326.)

The charge in the petition of the plaintiffs in error, that they cannot work their claims properly or at all, in any other mode than that complained of, raises no question which can be solved by any law of Congress, inasmuch as that body has never legislated upon the subject of "private nuisances" and probably never will.

Could a person who had purchased land from the general government for the purpose of erecting a soap or powder factory, and which was of no value for any other purpose, insist that the

question *whether or not his factory was a private nuisance to his neighbors, depended upon the true construction of any law of Congress.* All questions of this character must be settled by the common law or statutes of a State.

None of the laws mentioned either authorize the starting or maintaining private nuisances. Nor do they have any bearing upon such a question.

There being no impeachment or impairment of the title of the plaintiffs in error, derived from the United States, the Circuit Court was without jurisdiction.*

It is respectfully asked that the order remanding this cause to the State Court for trial be affirmed.

P. VAN CLIEF,
Attorney for Defendant in Error.

GEO. CADWALADER,
Of Counsel.

*Romie vs. Casanora, 91 U. S. Reports, 380.
McManus vs. O'Sullivan, Ibid., 578.
McStay vs. Friedman, 92 U. S. Reports, 724.

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DAVENPORT, IOWA.

Davenport, Iowa, Sept 7 1883

Francis Rawle Esq
402 Walnut St
Philadelphia Pa

Dear Sir

In answer to yours Aug 17 will say that we have tried to procure a record in Ex parte Johnston vs Clark & Co to 21 but without avail We keep a complete set of all such documents passing through our office. I don't mind that we shall ever need this again, but can't tell at a personal favor to you we send it, and only ask that in the event we ever desire to use it again it shall be returned to us for the purpose. We would not part with it on any other condition. Hoping this will serve your purpose & that the papers will reach you in good condition we remain

Very Truly Grant & Grant